

1 David Borgen (SBN 099354)
2 Roberta L. Steele (SBN 188198)
3 Heather Mills (SBN 215293)
4 GOLDSTEIN, DEMCHAK, BALLER,
5 BORGEN & DARDARIAN
6 300 Lakeside Drive, Suite 1000
7 Oakland, CA 94612
8 Telephone: (510) 763-9800
9 Facsimile: (510) 835-1417

10 *Class Counsel*
11 *[additional counsel on signature page]*

12
13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO/OAKLAND DIVISION

16 THOMAS ROSENBERG et al., on behalf of
17 themselves and classes of those similarly situated,

18 Plaintiffs,

19 vs.

20 INTERNATIONAL BUSINESS MACHINES
21 CORPORATION,

22 Defendant.
23
24
25
26
27
28

Case No. CV 06-00430 PJH

**~~[PROPOSED]~~ ORDER GRANTING
PLAINTIFFS' MOTION FOR AN AWARD
OF ATTORNEYS' FEES AND
~~REIMBURSEMENT OF COSTS~~**

Date: July 11, 2007
Time: 9:00 a.m.
Courtroom: 3, 17th Floor
Hon. Phyllis J. Hamilton

WHEREAS, the Court having considered the Joint Stipulation and Release of All Claims and preliminarily approved the same on January 11, 2007;

WHEREAS, the Court having entered the Order (1) Conditionally Certifying Settlement Classes and Collective Action, (2) Granting Preliminary Approval to Proposed Class Action Settlement and Plan of Allocation, (3) Directing Dissemination of Notice and Claim Form to the Class, (4) Approving Releases and (5) Setting Date for Fairness Hearing and Related Dates dated January 11, 2007, notice having been mailed to the class, the Court having held a fairness hearing concerning the proposed settlement;

WHEREAS, the Court having entered final approval of this class/collective action settlement on July 11, 2007, ~~2007~~;

WHEREAS, the Court having considered the Plaintiff's Motion for An Award of Attorneys' Fees and Reimbursement of Costs, all other papers filed related to this motion, and oral argument; and

WHEREAS, the Court having reviewed the entire record of this action, and good cause showing;

IT IS HEREBY ORDERED:

1. This Court approves an attorneys' fee award of \$16,250,000 to Class Counsel based on this Circuit's 25 percent benchmark. *See e.g. Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002); *Torrise v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993); *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990); *Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d 268, 272 (9th Cir. 1989). The amount of the reasonable attorneys' fee awarded to Class Counsel should be based on the percentage of the common fund approach. *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984). This award is based on the fact that the efforts of Class Counsel resulted in the creation of a common fund of \$65 million for the benefit of the class; the fact that Class Counsel litigated this case efficiently and effectively despite not receiving any compensation for their efforts to date or any guarantee that they would receive such compensation; and the requested fee is reasonable and justified.

~~2. The Court approves reimbursement of the litigation costs and expenses reasonably incurred by the Class in the amount of \$250,000. The Court finds reimbursement of the litigation costs and expenses in the amount of \$250,000 reasonable and justified.~~

THE COURT HEREBY ORDERS:

Class Counsel are hereby awarded attorneys' fees in the amount of \$16,250,000 and reimbursement of costs and expenses in the amount of \$250,000.

IT IS SO ORDERED this 12th day of July, 2007

THE HONORABLE PHYLIP



Additional Class Counsel

Kelly M. Dermody (SBN 171716)
Jahan C. Sagafi (SBN 224887)
LIEFF, CABRASER, HEIMANN &
BERNSTEIN, LLP
275 Battery Street, 30th Floor
San Francisco, CA 94111-3339
Telephone: (415) 956-1000
Facsimile: (415) 956-1008
Email: kdermody@lchb.com
Email: jsagafi@lchb.com

Adam T. Klein (AK 3293 [NY])
Justin M. Swartz (JS 7989 [NY])
Piper Hoffman (PH 4990 [NY])
OUTTEN & GOLDEN
3 Park Avenue, 29th Floor
New York, NY 10016
Telephone: (212) 245-1000
Facsimile: (212) 977-4005
Email: atk@outtengolden.com
Email: jms@outtengolden.com
Email: ph@outtengolden.com

Steven G. Zieff (SBN 84222)
David A. Lowe (SBN 178811)
Kenneth J. Sugarman (SBN 195059)
RUDY, EXELROD & ZIEFF LLP
351 California Street, Suite 700
San Francisco, CA 94104
Telephone: (415) 434-9800
Facsimile: (415) 434-0513
Email: szieff@reztlaw.com
Email: dal@reztlaw.com
Email: kjs@reztlaw.com

Todd F. Jackson (SBN 202598)
Claire Kennedy-Wilkins (SBN 231897)
Lindsay E. Nako (239090)
LEWIS FEINBERG LEE
RENAKER & JACKSON, P.C.
1330 Broadway, Suite 1800
Oakland, CA 94612
Telephone: (510) 839-6824
Facsimile: (510) 839-7839
Email: tjackson@lewisfeinberg.com
Email: ckwilkins@lewisfeinberg.com
Email: lnako@lewisfeinberg.com

1 J. Derek Braziel (00793380 [TX])
2 LEE & BRAZIEL, LLP
3 208 N. Market Street
4 Dallas, TX 75202
Telephone: (214) 749-1400
Facsimile: (214) 749-1010
Email: jdbraziel@l-b-law.com

5 Ira Spiro (SBN 67641)
6 Gregory N. Karasik (SBN 115834)
7 SPIRO MOSS BARNES, LLP
8 11377 W. Olympic Blvd., Floor 5
9 Los Angeles, CA 90064-1625
Telephone: (310) 235-2468
Facsimile: (310) 235-2456
Email: ispiro@smbhblaw.com
Email: gkarasik@smbhblaw.com

10 David Borgen (SBN 099354)
11 Roberta L. Steele (SBN 188198)
12 Heather Mills (SBN 215293)
13 GOLDSTEIN, DEMCHAK, BALLER,
14 BORGAN & DARDARIAN
15 300 Lakeside Drive, Suite 1000
16 Oakland, CA 94612
Telephone: (510) 763-9800
Facsimile: (510) 835-1417
Email: dborgen@gdblegal.com
Email: rsteele@gdblegal.com
Email: hmills@gdblegal.com

17 Richard Burch (24001807 [TX])
18 BRUCKNER BURCH, PLLC
19 5847 San Felipe, Suite 3900
20 Houston, TX 77057
Telephone: (713) 877-8788
Facsimile: (713) 877-8065
Email: rburch@brucknerburch.com